

EXHIBIT JJ



Planet Depos[®]
We Make It *Happen*[™]

Transcript of 190117_1621_Limited Confidentiality

Case: Caryn Devins Strickland -v- United States of America, et al.

Planet Depos

Phone: 888-433-3767

Fax: 888-503-3767

Email: transcripts@planetdepos.com

www.planetdepos.com

WORLDWIDE COURT REPORTING & LITIGATION TECHNOLOGY

1

2

3

4

5

6

7

CONVERSATION

8

"190117_1621_Limited Confidentiality"

9

IN RE: CARYN DEVINS STRICKLAND V. UNITED STATES OF
AMERICA, ET AL.

10

11

12

13

14

15

16

17

18

19

20 Job No.: 479402

21 Pages: 1 - 62

22 Transcribed by: Christian Naaden

Transcript of 190117_1621_Limited Confidentiality

11

1 Chapter 10 right now --

2 MR. STRICKLAND: It's the --

3 MR. ISHIDA: -- at mediation.

4 MR. STRICKLAND: -- same report. Yeah. Same
5 report.

6 MR. ISHIDA: We -- Chapter 9 is different.
7 Chapter 9 is -- it's that -- that -- the investigation
8 report, you know, and -- and Judge Gregory and I talked
9 about that, is on a different track from this.

10 MR. STRICKLAND: So is Tony going --? Tony's a
11 party either way. I mean, is he going to get it through
12 Chapter 9 or -- and just not Chapter 10, and at the end
13 of the day, he still has it?

14 MR. ISHIDA: Well, I mean, in -- in -- in --
15 well, if this -- again, if this proceeds to the formal
16 process, you know, OGC is -- their view is everybody
17 gets it, because it's -- it's now -- it's -- it's --
18 it's almost in effect -- you know, it -- it -- it's
19 wha- -- what -- it -- it -- they --

20 They drew the analogy, like, it's almost,
21 like, discovery. It's the only evidence in the case. So
22 their view is everybody is going to get -- the judicial

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

Transcript of 190117_1621_Limited Confidentiality

12

1 officer is probably going to order that the report be
2 given to all the parties.

3 MS. STRICKLAND: Co- --

4 MR. ISHIDA: Now, in the Chapter 9 case, if --
5 if they -- hypothetically, there's a recommendation for
6 discipline against Mr. Martinez, I can imagine that the
7 chief judge is going to want a response from Mr.
8 Martinez. And the only way he -- he can respond is if
9 he is given a copy of the report.

10 MR. STRICKLAND: I -- I thought that was the
11 point of the report though, was to determine whether
12 anybody was culpable, and make recommendations about
13 what is to be done about that.

14 MR. ISHIDA: Well, that -- that is. But --

15 MR. STRICKLAND: So --

16 MR. ISHIDA: -- to have --

17 MR. STRICKLAND: -- basically, Chapter 9 is on
18 hold then.

19 MR. ISHIDA: Well, no. I think I -- well, I
20 think they can -- they can both proceed, but they're
21 going to proceed on different tracks.

22 MR. STRICKLAND: Well, will Tony get a copy of

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

Transcript of 190117_1621_Limited Confidentiality

13

1 the report then for purposes of Chapter 9 at this time?

2 MR. ISHIDA: Oh, I see what you mean. Well,
3 you're right. In -- so, in thinking about this
4 mechanically that would not be -- that would not be
5 fair for him to have the report and you not to have the
6 report.

7 MR. STRICKLAND: That's exactly right.

8 MR. ISHIDA: So what we could -- what we could
9 do is hold the Chapter 9 proceeding in advance until
10 the Chapter 10 proceeding has been finished. I mean,
11 that's one way we could do that.

12 MS. STRICKLAND: It -- I mean, I guess just
13 practically speaking, if -- if -- if there's nothing,
14 say, observable that -- that I see occur, can I infer --
15 - is it a reasonable inference that the report doesn't
16 recommend any kind of disciplinary actions against
17 anybody?

18 MR. ISHIDA: You know, Caryn, I can't -- I
19 can't answer that question. The -- the whole point of
20 OGC's directive to me is that -- part of -- part of the
21 reason why they feel strongly about not disclosing the
22 investigation report is they feel that it -- it is

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

Transcript of 190117_1621_Limited Confidentiality

14

1 going to taint and compromise, you know, attempts to
2 resolve the matter informally.

3 MS. STRICKLAND: But I think that's part of
4 the problem. Is that as part of the -- my complaint of
5 retaliation, I was trying to resolve this informally.
6 But unfortunately, the -- my observation was that the
7 federal defender never really came to the table in good
8 faith to negotiate. So I'm -- I'm not sure.

9 To be honest, I actually feel quite the
10 opposite. I don't know how I can go into mediation
11 without any sense of what the findings or
12 recommendations are. Because without knowing whether
13 there are recommendations to hold people accountable
14 for wrongdoing, I'm not really in any kind of position
15 to make decisions about what to do next, or what to
16 even ask for. Like, I guess I feel just very much left
17 in the dark.

18 MR. ISHIDA: Well, I can -- I can -- I --
19 personally, I can understand that. Although, I think
20 what OGC is recommending makes a lot of sense too. In
21 that their view is if the report is disclosed, it then
22 becomes a fight about the report, and not about -- and

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

Transcript of 190117_1621_Limited Confidentiality

15

1 not about the -- the concerns and issues being raised.

2 But it -- it's almost going to create
3 satellite litigation over contesting what the report
4 says. And it's going to remove focus away from, really,
5 the -- the -- the real issues and concerns in the case.

6 MR. STRICKLAND: Is this kind of an ad hoc
7 approach to this particular case? Or is this the norm?

8 MR. ISHIDA: I -- I don't know. I mean --

9 MR. STRICKLAND: Well --

10 MR. ISHIDA: -- they -- they are much more
11 experienced about EDR matters than I am, which is why
12 we sought out. And we -- we asked their subject matter
13 expert.

14 MR. STRICKLAND: Yeah. I'm not -- I'm not --
15 this is not a loaded question. It's just -- it's -- is
16 this the first case that's gone to mediation that
17 you've done?

18 MR. ISHIDA: Oh, no, no.

19 MR. STRICKLAND: Okay. Well, in -- in those
20 other cases, wha- -- and I'm assuming most cases do
21 include a wrongful conduct investigation once
22 everybody's on notice of -- of what the allegations

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

Transcript of 190117_1621_Limited Confidentiality

16

1 are.

2 MR. ISHIDA: Unfortunately, this is not the
3 first, and it's not one involving misconduct. But every
4 -- you know, we -- and that's why I sought out general
5 counsel, is I wanted to be very careful about this and
6 all cases, again.

7 MR. STRICKLAND: Yeah. So I'm -- I'm curious,
8 what -- what provision of the Fourth Circuit's EDR plan
9 is OGC relying on to say that no party is entitled to
10 the report? Because the way I read it is slightly
11 different.

12 MR. ISHIDA: Well, I don't think -- they just
13 -- the -- the general counsel had just told me that
14 she's -- she looked at our EDR plan, she didn't specify
15 what part of it. She just told me that she reviewed the
16 plan, here's her -- here's her advice from counsel.

17 MR. STRICKLAND: That seems like a pragmatic
18 suggestion, as opposed to one that's based off the
19 terms of the EDR plan. Because the way I read it, and
20 this is, you know, in Chapter 9 and section four of
21 Chapter 10, it says that information and records,
22 that's a quote, is -- are shared based on a need to

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

Transcript of 190117_1621_Limited Confidentiality

17

1 know.

2 So it would seem like the -- the -- there
3 would have to be a determination that there was not a
4 need to know on the part of the parties in order for --
5 to not share information and records that are part of
6 the -- both of those proceedings.

7 MR. ISHIDA: I -- I -- I'm not -- you know, I
8 mean, I -- I -- I know the -- the provision you're --
9 you're -- you're citing.

10 MR. STRICKLAND: Yeah. I mean, if the report
11 is not information or a record, what is it. Well, I --
12 that's okay.

13 MS. STRICKLAND: Yeah. We'll --

14 MR. STRICKLAND: I -- we -- we can move on
15 from that.

16 MS. STRICKLAND: Yeah.

17 MR. STRICKLAND: I mean, it's -- it -- it --
18 it's more of just a point of curiosity. If AO has
19 suggested that the -- the report not be shared, it
20 would seem like there would be something definitive in
21 the pa- -- plan that they would say supports that.

22 MS. STRICKLAND: The other thing -- and -- and

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

Transcript of 190117_1621_Limited Confidentiality

18

1 of course, this is -- we're not trying to shoot the
2 messenger here. We know this is, you know -- you're --
3 this is what OGC recommended. But the idea that it
4 disincentivizes an informal resolution seems really
5 counterintuitive to me because it actually seems to
6 create an incentive to accelerate this.

7 Because neither side can find out the basic
8 facts and findings of what happened without it going to
9 a final hearing. So I'm not sure -- to the extent that
10 there is a pragmatic angle on what they're trying to
11 incentivize, it may be true as a general matter. But
12 I'm not sure that that is true in this particular case.

13 MR. ISHIDA: Well, I don't disagree with what
14 either of you has said. You know, I'm -- you know, I --
15 I'm left in the, I guess, impossible situation of
16 trying to discern the basis for OGC's advice to us. And
17 I don't -- certainly don't want to speak for them.

18 I mean, their -- their advice, their counsel
19 to us make a lot of sense, and we intend to follow it.
20 Does it, you know -- I mean, it -- are there issues and
21 difficulties? I think we can all agree that there are
22 different views on it they can take.

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

Transcript of 190117_1621_Limited Confidentiality

19

1 MR. STRICKLAND: On interpreting the report?

2 MR. ISHIDA: No. On -- on interpreting what
3 makes sense, and what procedure we, you know --
4 effectuates a good outcome. I mean, I think we can -- I
5 think we all -- you know, we can agree that the process
6 has -- is not perfect.

7 MS. STRICKLAND: Right. Well, what --? I'm
8 sorry. I'm just going back to something a little bit
9 earlier that you said about Chapter 9. So when -- when
10 will Chapter 9 be acted upon?

11 MR. ISHIDA: Well, unlike Chapter 10, there
12 are no deadlines in Chapter 9. But -- but, you know,
13 there -- there -- there is a good, practical reason for
14 deferring this. I mean, if -- if -- if you -- if you
15 look at judicial misconduct, there's a lot of times
16 where a complaint against a judge will be filed.

17 An EDR complaint and a judicial misconduct
18 complaint under the Judicial Conduct and Disability Act
19 typically, like -- like in this case, you've got two
20 different claims, two different tracks a lot of times
21 arising from the same set of fact.

22 And so what we've done in the past is we have

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

Transcript of 190117_1621_Limited Confidentiality

20

1 done what we are contemplating doing here. And that is,
2 you hold the judicial conduct piece of this in advance,
3 and you let the EDR piece just go forward.

4 MR. STRICKLAND: It's an uncomfortable
5 situation. I -- you know, because this is going to
6 require Caryn to mediate with somebody that she has
7 alleged engaged in wrongdoing. That's -- that's an
8 awkward thing to do. It's also going to require her to
9 come up with thoughts about how this could be resolved
10 not knowing whether the first assistant is going to
11 remain in his job and in that duty station.

12 MR. ISHIDA: Well, I think this is -- that
13 would be certainly be a matter that can be brought in
14 mediation.

15 MR. STRICKLAND: So it -- so -- so but -- but
16 in -- but how would that work in mediation? How would
17 you bring it up? Would you have to, essentially, try to
18 talk Tony into under- -- understanding that?

19 MR. ISHIDA: Well --

20 MR. STRICKLAND: Because that's been attempted
21 before.

22 MS. STRICKLAND: I --

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

Transcript of 190117_1621_Limited Confidentiality

21

1 MR. ISHIDA: Well, but -- but now you've got
2 the assistance of a mediator.

3 MS. STRICKLAND: Right. I mean, I guess for
4 me, there's -- there's a more -- there's a fundamental
5 question which really doesn't have to do with me at
6 all. But it has to do with the fact that the purpose of
7 the EDR plan, as I understand it, is not just to make
8 me whole, but it's to ensure a safe workplace
9 environment.

10 And it's disturbing to me the fact that these
11 allegations may be out there, and that whatever is in
12 the report isn't going to be acted on in a timely
13 manner out of a concern about its -- and -- and I could
14 be completely misunderstanding what you're saying. So I
15 apologize if I did.

16 But it sounds like the reasoning for not
17 giving me the re- -- or not giving Tony the report, or
18 whoever the report earlier to act on it is that I
19 wouldn't have the report. And to me, it seems like,
20 what about the interest in creating a safe working
21 environment? And the fact that all of this time has
22 passed, and allegations haven't been rectified or acted

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

Transcript of 190117_1621_Limited Confidentiality

22

1 on.

2 MR. ISHIDA: Well, nothing could happen until
3 we had a copy of the investigation report. And I think
4 I would disagree with the sense that nothing will
5 happen, or that somehow things are being delayed. I
6 think we've tried to act expeditiously as we possibly
7 could at every step of the proceeding. And now that we
8 have the report, we're moving ahead.

9 MS. STRICKLAND: But it sounds like the -- the
10 interest in -- I -- OGC's -- whatever's underlying
11 their recommendation to keep the report from the
12 parties is outweighing the interest in expeditiously
13 imposing accountability.

14 MR. ISHIDA: Well, I think there's a
15 difference between when that happens and ultimately
16 that it will happen. I think I can -- I can certainly
17 assure you that Chief Judge Gregory is going to -- is
18 going to hold -- if -- if -- if parties need to be held
19 accountable, he will certainly do that.

20 MR. STRICKLAND: But -- but the basis for
21 holding people accountable is the report. I mean,
22 Chapter 9 is the pathway to accountability.

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

Transcript of 190117_1621_Limited Confidentiality

62

1 CERTIFICATE OF TRANSCRIBER

2 I, Chris Naaden, a transcriber, hereby declare
3 under penalty of perjury that to the best of my ability
4 from the audio recordings and supporting information;
5 and that I am neither counsel for, related to, nor
6 employed by any of the parties to this case and have no
7 interest, financial or otherwise, in its outcome, the
8 above 61 pages contain a full, true and correct
9 transcription of the tape-recording that I received
10 regarding the event listed on the caption on page 1.

11
12 I further declare that I have no interest in
13 the event of the action.

14
15 
16

17 February 10, 2023

18 Chris Naaden
19
20
21
22

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM